IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8942 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJKOT TEXTILE MILLS

Versus

MILL KAMDAR MANDAL

Appearance:

1. Special Civil Application No. 8942 of 2002
NANAVATI & NANAVATI for Petitioner No. 1
MR AK CLERK for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 13/09/2002

ORAL JUDGEMENT

Rule. Mr AK Clerk waives service of Rule. In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. In reference (IC) No. 3 of 1992 pending before

the Industrial Court at Rajkot, the respondent-Mill Kamdar Mandal, a union of workmen of petitioner-Rajkot Textile Mills, has made certain demands. During pendency of the reference, the Industrial Court had passed the following interim order on 12.11.1992 :-

"Reference u/s 73A of the BIR Act, being held maintainable. It is hereby ordered that until 31.03.1993 (Reviewable and extensible thereafter as per circumstances then exit) the mill is restrained from abolishing the permanent post, other than there for which agreement dated 29.05.1990 is arrived at between the first and second party, badli workers who is either senior most or is selected to fill the said post by selection as contemplated in the definition "permanent employees", be allowed to work on such permanent post in accordance with standing order. It is further declare that this order in no manner, shall effect the right of the second party to apply closure of lay off in accordance with law if any case, it so chooses.

With reference to Exh. 11, it is ordered that the second part-mill may not dismantle or shift or sell the machinery which is integral part of the function of the two shifts agreed to be worked as per agreement dtd. 29.05.1990."

Subsequently, the management filed Misc. Application for modification which was allowed by the Industrial Court and the following order came to be passed :-

"Application is allowed.

The operation of the order dated 12.11.1992 passed in Ref. (ICR) No. 3/92 is revised, and ordered restraining the mill from abolishing permanent post other than those for which agreement dated 29.05.1990 is arrived at between the first and second party is made effective until the reference is decided by that operation of the order directing the mill to allow badli workers or seniority or selection to work against permanent post is made inoperative until such time as the production starts."

3. As far as the order dated 12.11.1992 is

concerned, the same was challenged by the management in Special Civil Application No. 9598 of 1992 which came to be dismissed by this Court on 23.12.1992. As far as the modification is concerned, the same came to be challenged by the respondent-union in Special Civil Application No. 11206 of 1993 and in the said petition, this Court passed an interim order staying the aforesaid modification.

4. Recently, Civil Application No. 4262 of 2002 came to be filed by the National Textile Corporation for vacating the stay order granted by this Court against the modification made by the Industrial Court. This Court found that during pendency of the petition, the mill Company has already been declared as a sick unit and a scheme has already been approved by the BIFR. Hence, it is not possible on the part of the management to give any permanent work to the concerned employees and, therefore, there is no question of offering any work to the concerned workmen. Therefore, this Court found that the interim order passed by this Court at the time of admitting Special Civil Application No. 11206 of 1993 had become infructuous in view of the subsequent events. Hence, this Court vacated the interim order passed in Special Civil Application 11206 of 1993. Accordingly, as of now, the interim arrangement operating is as per the Industrial Court's order dated 12.11.1992 read with the subsequent modification which is quoted hereinabove.

5. In the present petition, the petitioner-employer has prayed that the aforesaid interim order dated 12.11.1992 restraining the employer from dismantling or shifting or selling the machinery is required to be set aside or vacated because in the scheme sanctioned by the BIFR, from the sale proceeds of the assets of the petitioner-mill, other viable mills of the National Textile Corporation are required to be revived. It is, therefore, submitted that the interim order as passed by the Industrial Court in 1992 would not serve any purpose and the petitioner's plant and machinery will depreciate in value with passage of time and will fetch lesser price causing loss not only to the management, but even to the workmen if at all the workmen were to succeed in the reference.

6. In view of the above submission, notice was issued to the respondent-union and Mr AK Clerk, learned counsel appears for the respondent-union. Mr Clerk submits that the respondent-union would have no objection to the interim order passed by the Industrial Court being vacated, provided the sale proceeds from the sale of the plant and machineries and other assets of the Company are

deposited with the Industrial Court to the extent of Rs.51,69,329/-, rounded off to Rs.52 lacs, which is the claim made by the workmen in the aforesaid pending reference.

7. Mr SI Nanavati, learned counsel for the petitioner-employer, however, submits that the petitioner is a unit of National Textile Corporation (Gujarat) Ltd. and the National Textile Corporation (Gujarat) Ltd. will give an undertaking that in case the workmen were to succeed before the Industrial Court in the pending reference, the National Textile Corporation (Gujarat) Ltd. would meet with the liabilities arising from any award in favour of the workmen subject to the right of the employer to challenge the award if at all one were to be passed in favour of the workmen and the sale proceeds of the plant and machineries may not be required to be kept apart as that would adversely affect the revival of the other viable units of the National Textile Corporation.

8. Having heard the learned counsel for the parties, it appears to the Court that when the mill is lying closed for quite some time, it is obvious that the plant and machineries would depreciate in value and, therefore, earlier disposal of the plant and machineries would be in the interest of all concerned. At the same time, in order to secure the interests of the workmen, in case of their success in the pending reference, some arrangement is also required to be worked out to see that they get their dues immediately if an award were to be passed in their favour but at the same time, blocking the entire sale proceeds from the plant and machineries to the extent of Rs.52 lacs claimed by the workers in the reference would also adversely affect the revival program being undertaken by the National Textile Corporation (Gujarat) Ltd. Moreover, in view of the statement coming from the learned counsel for the petitioner that while the plant and machineries would be disposed of very soon, disposal of the lands and buildings will take some more time, it appears to the Court that the interests of justice would be served if the petition is disposed of in terms of the following directions and orders :-

(i) Subject to the condition that the Managing Director of National Textile Corporation (Gujarat) Ltd. files an undertaking before this Court stating that out of the sale proceeds of the plant and machineries of Rajkot Textile Mills at Rajkot, a sum of Rs.26 lacs will be kept in a separate bank account with the petitioner's

bankers till 31-12-2002 and similarly out of the sale proceeds of the lands and buildings of the Rajkot Mills Ltd. at Rajkot another amount of Rs. 26 lacs will be kept in the separate bank account with the petitioner's bankers till 31-12-2002 to meet with the liabilities of the petitioner-employer, in case the Industrial Court were to pass an award in favour of the workmen in reference (IC) NO. 3 of 1992 (subject to their right to challenge such award), the interim order dated 12.11.1992 with the subsequent modification passed by the Industrial Court in the above numbered reference shall stand vacated upon filing of the undertaking.

(ii) The Industrial Court, Rajkot shall hear and decide Reference (IC) No. 3 of 1992 as expeditiously as possible and in any case latest by 31.12.2002.

(iii) The amount of Rs.26 lacs to be kept in a separate bank account out of the sale proceeds of the plant and machineries as well as the amount of Rs.26 lacs to be kept in the separate account from out of the sale proceeds of the lands and buildings of Rajkot Textile Mills at Rajkot shall not be utilized by the National Textile Corporation (Gujarat) Ltd. till 31.12.2002 or till the date of the award in the above reference, whichever is earlier.

It is directed and ordered accordingly.

9. The petition is accordingly disposed of in terms of the aforesaid directions and orders. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

sundar/-